

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

John Kelley, et al.

Plaintiffs,

v.

Alex M. Azar II, et al.,

Defendants.

Case No. 4:20-cv-00283-O

NOTICE OF SUPPLEMENTAL AUTHORITY

The plaintiffs respectfully submit this notice of supplemental authority to alert the Court of a recent decision in *Leal v. Azar*, No. 2:20-cv-00185-Z (N.D. Tex.). The plaintiffs in *Leal* are seeking to enjoin the enforcement of the Contraceptive Mandate in its entirety, on the ground that 42 U.S.C. § 300gg-13(a)(4) violates the Appointments Clause and the nondelegation doctrine. A few days ago, the district court in *Leal* granted in part the federal defendants' motion to dismiss and denied their motion in part. *See Leal v. Azar*, No. 2:20-cv-00185-Z (N.D. Tex. 2020) (ECF No. 21). We have attached the memorandum opinion and order.

The district court in *Leal* agreed with some of the arguments that the defendants in this case have presented in their pending motion to dismiss. But it also rejected other arguments that the defendants in this case are making. The *Leal* court, for example, held that the plaintiffs in that case had sufficiently alleged standing to challenge the constitutionality of 42 U.S.C. § 300gg-13(a)(4), and it rejected the lack-of-standing arguments that the defendants are offering in this case. *See Op.* at 7–11. The *Leal* court also rejected the statute-of-limitations argument that the defendants in this case have made. *See id.* at 11–14. And the *Leal* court held that the plaintiffs in that case

had sufficiently alleged a violation of the Appointments Clause and denied the federal defendants' motion to dismiss the Appointments Clause claim. *See id.* at 23–27.

On the other hand, the *Leal* court agreed that res judicata precludes members of the *DeOtte* class from challenging 42 U.S.C. § 300gg-13(a)(4). *See id.* at 14–23. And the *Leal* court rejected the plaintiffs' nondelegation challenge to 42 U.S.C. § 300gg-13(a)(4) and dismissed that claim, even as it allowed the Appointments Clause challenge to go forward. *See id.* at 27–29.

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CERTIFICATE OF SERVICE

I certify that on December 28, 2020, I served this document through CM/ECF

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